

## **REMARKS**

Favorable reconsideration and allowance of this application are requested.

### **1. Discussion of Amendment**

By way of the amendment instructions above, suitable application headings have been inserted into the specification at appropriate locations therein. In addition, the prior pending claims have been amended for purpose of clarity and to address the rejections advanced under 35 USC §112, second paragraph.

Following entry of this amendment, claims 1-12 will remain pending herein for which favorable action on the merits is solicited.

### **2. Response to Specification Objection**

The specification headings inserted by way of this amendment are believed to address the Examiner's objection to the specification as originally filed. Withdrawal of such objection is therefore in order.

### **3. Response to 35 USC §112 Rejection**

The amendments to the claims presented herewith are likewise believed to address the Examiner's rejection advanced under 35 USC §112, second paragraph. Withdrawal of the same is therefore in order.

### **4. Response to Drawing Objection**

Applicants are perplexed by the Examiner's objection to the drawings lacking a view of the "tensioning device" as recited in claim 6 since a preferred embodiment of such a structure is unquestionably depicted in Fig. 5 and discussed in the specification on page 10, lines 12-32.

Thus, since the “tensioning device” is in fact depicted in the drawings no amendments need to be made to the same. Withdrawal of the objection advanced against the drawings is therefore in order.

## **5. Response to Substantive Rejections**

All prior claims have attracted a rejection under 35 USC §102(e) as allegedly anticipated by Nesper et al (US 2004/0116961).<sup>1</sup>

Applicants wish to initially emphasize that the bones to be fixed by the fixing device of the presently claimed invention physically lie 'under' (in figures of the present application which illustrate the cross section of the device) both of the two fixing plates. In contrast, the bones (10,12) to be fixed are placed between two plates in the device of Nesper et al.

With this distinction in mind, it then becomes clear that the bone fixation device of applicants' claim 1 and the device of Nesper et al are constructed and operate in a totally different manner from each other.

For example, in the device of applicants' claim 1, the trajectory of the cable comprises "...a bend to an outward part (b) running across the first ring in the direction of its outer edge...." This part runs between the two fixing plates because the bones to be fixed are not placed between the two plates upon fixing of the bones.

In contrast, the bones to be fixed are sandwiched between the plates in Nesper et al. Hence it is not feasible that the tension band 74 of Nesper et al is also between the plates. The tension band 74 of Nesper et al runs through a separation gap 14 (a hole) such as can be seen in Fig. 1 thereof.

---

<sup>1</sup> The Examiner actually advanced two separate rejections of the claims under 35 USC §102(e) based on Nesper et al, namely a rejection of claims 1-5, 7 and 10-12, and a rejection of claims 1, 6 and 9. Since each rejection is based on the same reference and the same statutory provision, they will be addressed collectively in the applicants' responsive remarks.

**MARISEN et al**  
**Serial No. 10/586,972**  
December 22, 2009

The trajectory of the tension band of Nesper et al is hence completely different from the trajectory of the cable of applicants' claim 1.

Accordingly, Nesper et al does not disclose at least the trajectory of the cable. Moreover, such a cable trajectory is not obvious from D1.

Withdrawal of the rejection advanced against the prior claims 1-12 under 35 USC §102(e) based on Nesper et al is therefore in order.

## **6. Response to Double Patenting Rejection**

The comments above with respect to the patentability of the pending claims over Nesper et al alone is equally germane to the *unobviousness* of the pending claims in view of claims 1-10 of USP 7,582,088 in view of Nesper. As such, withdrawal of the obviousness-double patenting rejection is likewise in order.

**MARISSEN et al**  
**Serial No. 10/586,972**  
December 22, 2009

**7. Fee Authorization**

No fee is believed to be required by this amendment. However, should the Office deem otherwise, the Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Account No. 14-1140.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

By: /Bryan H. Davidson/  
Bryan H. Davidson  
Reg. No. 30,251

BHD:dlb  
901 North Glebe Road, 11<sup>th</sup> Floor  
Arlington, VA 22203-1808  
Telephone: (703) 816-4000  
Facsimile: (703) 816-4100